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IN THE SUPREME COURT
OF THE
UNITED STATES

CRYSTAL MAY STROBEL,
Petitioner
V.

STATE OF NORTH CAROLINA,
Respondent

On Petition for Writ of Certiorari
To the Supreme Court
Of the State Of North Carolina

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review:

Whether Written-Only Advisement of the *Miranda* Warnings Is Effective to Inform Suspects of their Rights or Instead the Opinion of the North Carolina Court Conflicts with *Miranda v. Arizona*

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

Petitioner Crystal Strobel, a North Carolina incarcerated person, prays that a writ of Certiorari issue to the North Carolina Supreme Court because her conviction was obtained in violation of her Fifth Amendment Rights as made binding upon that State by the Fourteenth Amendment when during a custodial interrogation the police did not orally warn her about those rights.

OPINIONS BELOW

The published opinions of the North Carolina Supreme Court denying discretionary review and of the North Carolina Court of Appeal are reproduced in the Appendix.

JURISDICTION

The petition for discretionary review by the North Carolina Supreme Court was denied February 3, 2005. This Court has jurisdiction under 28 U.S.C.§1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V

No person. . .shall be compelled in any criminal proceeding to be a witness against himself.

Amendment XIV sec.1

[N]or shall any State deprive any person of life, liberty, or property, without due process of law

18 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari. . . where any right, privilege, or immunity is specially set up or claimed under the Constitution . . .of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

Petitioner was charged with robbery with a dangerous weapon and with conspiracy to commit robbery. She moved the court to suppress her statement to police based upon *Miranda v. Arizona* 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed.2d. 694(1966) and violation of her Fifth and Sixth Amendment Rights. The trial court denied the motion and Petitioner pled guilty to the consolidated charges; she was sentenced to a mitigated sentence of thirty-eight to fifty-five months. She appealed and the North Carolina Court of Appeal affirmed her conviction. The facts below are taken from the appellate opinion.

> The State's evidence tended to show that on 14 November 2001, Jessica Pritt, a manager at a Taco Bell restaurant in Havelock, North Carolina, was robbed while making a nightly deposit... Three individuals were involved in the robbery. One of the individuals, Ernest Erdman, approached Pritt with a bottle while [Petitioner] waited in the car. Officer Brian Woods of the Havelock City Police Department interviewed [Petitioner] on 25 November, 2001, after receiving information from Erdman's girlfriend that indicated

> [Petitioner] was involved in the crime. This was a non-custodial interview. On 29 November, 2001, a warrant was issued for the arrest of [Petitioner] charging her with conspiracy to commit robbery with a dangerous weapon. Police arrested [Petitioner] on November 30, 2001, and she appeared before the District Court of Craven County on 3 December, 2001. At that time, [Petitioner] requested an attorney and the court appointed Joshua Willey to represent her on the conspiracy charge. (Opinion, Appendix page 4.)

After counsel had been appointed to represent Petitioner on the conspiracy to commit robbery charge, she was arrested for the robbery itself. When the police questioned her they gave her, without any oral explanation or discussion of the contents, a written form, called "Voluntary Statement" which contained the *Miranda* warnings and other language:

The trial court found that "Detective King did not orally advise the Defendant of her *Miranda* Rights, but rather they were given to her to read on State's Exhibit No. 1, the "Voluntary Statement." The written statement form set forth each of the *Miranda*

rights. It also contained the following language:

> I do not want to talk to a lawyer and I hereby knowingly and personally waive my rights to remain silent and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at anytime hereafter and have a lawyer present with me before...answering any more questions or making any more statements if I choose to do so.

Defendant signed each page of the statement. The following language appears at the bottom of the first page of the statement:

> I have read each page of this statement consisting of four pages, each page of which bears my signature and corrections, if any, bears my initials, and I certify that the facts contained hereon are true and correct. I further certify that I have made no request for advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request the statement be stopped. I also declare that I...was not told or prompted what to say in this statement,

and that this statement was completed at 10:40 a.m. on the 24th of January, 2002.

(Opinion, Appendix pages 4-5.)

The evidence presented at the suppression motion hearing showed that When Petitioner was arrested on the second charge, the officer took her to the police station and demanded a statement.

Petitioner told the police officer that she already had an attorney; however, the officer told her that she had appointed counsel on the conspiracy to commit the robbery charge but not on the robbery itself. The trial court found that she had made at best an equivocal request for counsel because she did not take the opportunity to telephone Mr. Willey and she did not take advantage of his offer to stop the statement until she had spoken with him.

While she was writing her statement she was discussing whether she had a lawyer with the police and that Petitioner was neither told to read, nor even given quiet time to read, the advisement of rights contained in the "Voluntary Statement" form. Instead, the police officer sat her down and told her he wanted a statement (Reporter's Transcript of Suppression Motion Hearing, page 23). He then provided her with a form which had "the rights on there" (Id at p. 24), sat down next to her with the form, and immediately began filling out the preliminary information---which is also the

part of the form containing the *Miranda* warnings. (Id at p. 25.)

The part of the form the officer testified that *he* filled out also contains the following language:

Before answering any questions or making any statement, Sgt. D.H. King, the person who has identified himself as a Havelock police officer, *duly warned and advised me and I know and understand that I have the following rights:* I have the right to remain silent and do not have to answer any questions or make any statements at all, that any statement I can make and will be used against me in Court or Courts of law for the offense or offenses concerning which the following statement in hereinafter made. That I have the right to consult with a lawyer of my own choice before or at anytime during questioning or statements I make. That if I cannot afford to hire a lawyer I may request and have a lawyer appointed for me by the proper authorities before, or at any time during any questioning or statements that I make without cost or expense to me. That I can stop answering any questions or making any statements at any time that I choose and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements. I do not want to talk to a lawyer and I hereby knowingly and personally waive my right to remain silent and my right to have a lawyer present while I

make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at anytime hereafter and have a lawyer present with me before answering any more questions or making any more statements. I declare the following voluntary statement is made of my own free will without promise or hope for reward, without fear or threat, without leniency, or offer of leniency by any person or persons whomsoever." (Reporter's transcript of suppression motion hearing at pp. 26-27. *Emphasis added.*)

The officer testified that they went over her *statement* after she completed it and she signed each page, so that is how he knows she read it--- he did not specify that he meant that Petitioner had read the advisements (Id. at p. 28.)

Petitioner contends that her waiver of her rights was involuntary because the written-only advisement did not effectively inform her of those rights.

REASONS FOR GRANTING THE PETITION

1. The Petition Should Be Granted because the Written Only Miranda Warnings Did Not Adequately Advise Petitioner of Her Rights

This is a case of first impression to this Court. It was a case of first impression to the

North Carolina courts. (Opinion, Appendix at p.5) There is no dispute about the necessity for the *Miranda* warnings. However, how and when such warnings must be given has been the subject of almost continuous litigation. While several Circuits have agreed with the North Carolina court that *Miranda* warnings need not be given in oral rather than in written form, this Court has not decided the issue. Petitioner urges this Court to issue the writ because the Opinion of the North Carolina courts conflicts with the long-standing jurisprudence of this Court regarding the protection of the constitutional rights of those accused of crime.

More than a half century ago this Court decided *Johnson v. Zerbst* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed 1461 (1938), explaining that it should "indulge every reasonable presumption against waiver of fundamental constitutional rights." (304 US at 464, 58 S.Ct. 1023.) In the intervening years this Court has also held that while the Sixth Amendment right to counsel does not depend upon its invocation (*Brewer v. Williams* 430 U.S. 386, 97 S.Ct. 1232, 51 L.Ed 2d 424 (1977)), the Fifth Amendment right to counsel requires a suspect to make an unequivocal request for counsel before the police must stop an interrogation. (*Davis v. United States* 512 U.S 452, 459, 129 L.Ed2d 362, 371(1994)). In *Texas v. Cobb* 532 U.S. 162, 121 S.Ct. 1335, 149 L.Ed.2d 321, this Court explained that the Sixth Amendment right to counsel is offense specific; thus following *Cobb*, the North

Carolina Court correctly decided that Petitioner's counsel on the conspiracy charge did not automatically represent her on the robbery. However, in *Cobb*, this Court also emphasized that its opinion had no effect on and did not limit the Fifth Amendment right to counsel because the Sixth Amendment right to counsel did not even attach until criminal proceedings were initiated in court. (532 U.S. at 172, 121 S.Ct. 1335.)

Although Petitioner initialed and signed the written document, there is no support for the North Carolina Court's finding that she read or understood the written rights. Moreover, the vice of written-only advisement and waiver is not limited to Petitioner's case: it is common knowledge that many people accused of crime may have learning disabilities or psychological problems that prevent them from comprehending what they read, especially when under the severe stress necessarily engendered by custodial interrogation. The difficulty that people who have cognitive limitations face when confronted with the Miranda warnings has been the subject of much historical concern. (*See Marvel*, MENTAL SUBNORMALITY OF ACCUSED AS AFFECTING VOLUNTARINESS OR ADMISSIBILITY OF CONFESSION, 8 ALR 4th 16.) It is because an accused person is vulnerable, because the mere circumstance of custodial interrogation may overcome her will that this Court required the *Miranda* warnings. This Court should grant the writ so that it may halt the

efforts of the Circuits to dilute and eviscerate *Miranda.*

2. This Court Has Found Unconstitutional Written- Only Waivers by Criminal Defendants of their Right to Counsel

This Court has already found unconstitutional written-only waivers of the Fifth and Sixth Amendment rights to counsel. In Petitioner's case, the failure to orally advise her of her rights led to involuntary waiver of not only her right against self-incrimination but also her Fifth Amendment right to counsel. (*Texas v. Cobb, supra,* 532 U.S. 162, 172, 121 S.Ct. 1335,1343, 149 L.Ed.2d 321).) In *Cobb, supra,* this Court declined the concurrants' invitation to disapprove of *Michigan v. Jackson* 475 U.S. 625, 106 S.Ct. 1404, 69 L.Ed 2d 631(1986). (532 U.S. 162 at 174-75, 121 S.Ct. 1344.) In that case this Court iterated that *written waivers are insufficient to justify police- initiated interrogations after the request for counsel in a Fifth Amendment analysis, so too are they insufficient to justify police- initiated interrogations after the request for counsel in a Sixth Amendment analysis.* (475 U.S. at p. 635, 106 S.Ct. 1411.)

The written advisement in Petitioner's case contains language suggesting that there should be a contemporaneous oral advisement. "*Before answering any questions or making any statement*, Sgt. D.H. King, the person who has identified himself as a Havelock police officer, *duly warned and*

advised me." (Reporter's transcript of suppression motion hearing at pp. 26-27.) Further, the record demonstrates that the advisement left Petitioner confused about whether her attorney in the conspiracy case could actually assist her in the new case. The circumstances give rise to an inference Petitioner was misled about whether the written- only advisement about the *Fifth Amendment* right to counsel, which did not match the contemporaneous discussion about whether her *Sixth Amendment* right to counsel had attached so that she already had an attorney in the robbery case, misled her. The record further discloses that Petitioner describes herself as having completed only the eighth grade. She was not asked whether she suffered from any learning disabilities or abnormalities that could have affected her comprehension, under conditions of extreme stress of these arcane provisions.

The totality of the circumstances then does not support the decision of the North Carolina courts that she was effectively advised of her rights or still less knowingly, intelligently, and voluntarily waived either her Fifth Amendment or Sixth Amendment Rights.

3. This Issue Is Ripe for This Court to Resolve the Confusion in the Circuits and In the North Carolina Courts

In its Opinion, the North Carolina Court of Appeal found support for its

decision on what it recognized as a matter of first impression, in decisions of the several Circuits of the United States Court of Appeal. (*See e.g., State v. Sledge*, 546 F.2d 1120, 1122 (4th Cir.), *cert. denied*, 430 U.S. 910, 51 L. Ed. 2d 588 (1977)(defendant admitted he could read and write and that he had read the document, court nevertheless said the preferred method was both oral and written); *United States v. Coleman*, 524 F.2d 593, 594 (10th Cir. 1975); *United States v. Bailey*, 468 F.2d 652, 659-660 (5th Cir. 1972); *United States v. Alexander*, 441 F.2d 403, 404 (3d Cir. 1971); *United States v. Van Dusen*, 431 F.2d 1278, 1280 (1st Cir. 1970); *United States v. Johnson*, 426 F.2d 1112, 1115 (7th Cir.), *cert denied*, 400 U.S. 842, 27 L. Ed. 2d 78 (1970) (but oral as opposed to written advisement was not discussed); *United States v. Osterburg*, 423 F.2d 704 (9th Cir. 1970) (but defendant, who did not sign the advisement, orally confirmed that he understood them before making his statement); *Bell v. United States*, 382 F.2D 985, 987 (9th Cir. 1967).) (Opinion of the North Carolina Court of Appeal, Tab A at pages 2-3).

Petitioner notes that the North Carolina Court's reading of these decisions as to the effectiveness of written-only advisements is somewhat strained because those cases almost unanimously support the belief of the North Carolina Court that the better practice is to give both oral and written warnings. (Id. at page 3.)

In *Van Dusen* the First Circuit held that as a matter of law oral warnings were not required where the defendant was observed to read the form, signed it, began to talk, and had told the agents orally that he understood it; nevertheless the Court thought that the warning should have been expanded to explain that failure to sign the form while proceeding to talk did not render the statement inadmissible. The First Circuit also was addressing whether *a written waiver* of rights was required. (431 F.2d 1278, 1280-1281.)

In *Sledge* the Fourth Circuit iterated that it was the prosecution's burden to prove the voluntariness of the waiver and that the preferred practice included both an oral recitation of the rights and a written explanation thereof with a request that he execute a written waiver of the rights. (546 F.2d 1120, 1122.)

The Tenth Circuit, almost uniquely, found the written -only advisement sufficient without hesitation or expressed preference for both oral and written. (*United States v. Coleman*, supra, 524 F.2d 593, 594.)

Many of the cases rely upon the Ninth Circuit decision *Bell v. United States* but because the Ninth Circuit placed the burden on appellant to show that he was not properly advised of his rights by showing that he did not read and understand the warnings (382 F.2d 985, 987) that case should be rejected in view of this Court's decisions placing on the prosecution the burden of

showing voluntariness of the waiver of constitutional rights. (See, e.g. *Missouri v. Seibert* -U.S.--, 124 S.Ct 2601(2004).)

This Court should grant the Petition to resolve the confusion in the Courts of Appeals of the United States and the State of North Carolina.

4. This Court Should Grant the Writ To Protect Miranda by Ensuring That Suspects Are Fully And Effectively Informed Of Their Rights Before They Are Questioned By Police

At the hearing on the motion to suppress the confession, Officer King *initially testified that Petitioner did not appear to read the written warnings but simply began to fill out the form after he handed to her.* The rule of *Miranda* requires clear advisement of the rights and a knowing, intelligent, and voluntary waiver of those rights. (*Miranda v. Arizona, supra,* 384 U.S. at 464, 86 S. Ct 1602.)

Last term this Court reaffirmed its commitment to *Miranda* and condemned question-first advisements. (*Missouri v. Seibert*, supra, --U.S.--, 124 S.Ct. 2601, 2604.) In *Miranda,* we explained that the "voluntariness doctrine in the state cases ... encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from making a free and rational choice," *id.,* at 464-465, 86 S.Ct. 1602. We appreciated the difficulty of judicial enquiry *post hoc* into the circumstances of a police

interrogation, *Dickerson v. United States*, 530 U.S. 428, 444, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000), and recognized that "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk" that the privilege against self-incrimination will not be observed, *id.*, at 435, 120 S.Ct. 2326. Hence our concern that the "traditional totality-of-the-circumstances" test posed an "unacceptably great" risk that involuntary custodial confessions would escape detection. *Id.*, at 442, 120 S.Ct. 2326." (124 S.Ct. 2607-2608.)

This Court condemned question-first because it was unreasonable to believe that the warnings could function effectively to inform the suspect clearly that he had the choice between talking and not talking. (Id. at 2610.)

The same concern that required condemnation of question-first requires this Court to decide *how* Miranda warnings should be given as it has done for *when* they should be given.

Conclusion

Petitioner was convicted in violation of her rights to the assistance of counsel, to be free of compulsory self-incrimination, and to be advised of those rights under the United States Constitution. This Court should therefore issue the writ and

examine the adequacy of written-only advisement of a person's Fifth Amendment as well as Sixth Amendment rights.

Therefore, she requests that this Court issue a writ of certiorari to the North Carolina Supreme Court, that her conviction may be reversed.

Dated: May 1, 2005

Respectfully submitted
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APPENDIX A

OPINION OF THE COURT OF APPEAL OF THE STATE Of NORTH CAROLINA

STATE OF NORTH CAROLINA v. CRYSTAL STROBEL

NO. COA03-566

Filed: 18 May 2004

Appeal by defendant from judgment entered 22 October 2002 by Judge Benjamin G. Alford in Craven County Superior Court. Heard in the Court of Appeals 4 February 2004.

Roy Cooper, Attorney General, by Daniel D. Addison, Assistant Attorney General, for the State.

Staples Hughes, Appellate Defender, by Katherine Jane Allen, Assistant Appellate Defender, for defendant-appellant.

STEELMAN, Judge.

Defendant, Crystal Strobel, appeals the trial court's denial of her motion to suppress a statement given by her to the police. For the reasons discussed herein, we affirm.

The State's evidence tended to show that on 14 November 2001, Jessica Pritt, a manager at a Taco Bell restaurant in Havelock, North Carolina, was

robbed while making a nightly deposit at the Branch Bank and Trust. Three individuals were involved in the robbery. One of the individuals, Ernest Erdman, approached Pritt with a bottle while defendant waited in the car. Pritt sustained minor head injuries as she was robbed of a $1600 deposit.

Officer Brian Woods of the Havelock City Police Department interviewed defendant on 25 November 2001, after receivinginformation obtained from Erdman's girlfriend that indicated defendant was involved in the crime. This was a non-custodial interview. On 29 November 2001, a warrant was issued for the arrest of defendant, charging her with conspiracy to commit robbery with a dangerous weapon. Police arrested defendant on 30 November 2001, and she appeared before the District Court of Craven County on 3 December 2001. At that time, defendant requested an attorney and the court appointed Joshua Willey to represent her on the conspiracy charge.

Sergeant David King of the Havelock Police Department subsequently interviewed Ernest Erdman, who implicated defendant as a participant in the robbery. On 18 January 2002, a warrant was issued for the arrest of defendant, charging her with robbery with a dangerous weapon. Police arrested defendant on 24 January 2002, and she gave a written statement to Sergeant King following her arrest. Defendant moved to suppress her 24 January 2002 statement. The trial court denied this motion after a hearing on 22 October 2002. Following this ruling, defendant entered pleas of guilty to robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. The charges were consolidated by the trial court and defendant received an active sentence from the mitigated range of thirty-eight to fifty-five months.

Defendant appeals the denial of her motion to suppress pursuant to N.C. Gen. Stat. § 15A-979(b). This is her soleassignment of error.

Sergeant King's interview of defendant on 24 January 2002 was a custodial interrogation. Prior to a custodial interrogation of a defendant, an officer must give warnings to the defendant as mandated by the holding of the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966); *State v. Steptoe*, 296 N.C. 711, 716, 252 S.E.2d 707, 710 (1979). In order for a statement obtained during a custodial interrogation to be admissible, *Miranda* requires the following warnings be given to an accused before such interrogation begins: (1) that she has the right to remain silent; (2) that anything she says can and will be used against her in court; (3) that she has the right to consult with a lawyer and to have a lawyer present during interrogation; and (4) that if she cannot afford an attorney, counsel will be appointed to represent her. *Steptoe*, 296 N.C. at 716, 252 S.E.2d at 710.

The trial court found that "Detective King did not orally advise the Defendant of her Miranda Rights, but rather they were given to her to read on State's Exhibit No. 1, the Voluntary Statement." The written statement form set forth each of the *Miranda* rights. It also contained the following language:

I do not want to talk to a lawyer and I hereby knowingly and personally waive my rights to remain silent and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I havethe right and privilege to terminate any interview at anytime hereafter and have a lawyer present with me before...answering any more questions or making any more statements if I choose to do so.

Defendant signed each page of the statement. The following language appears at the bottom of the first page of the statement:

I have read each page of this statement consisting of four pages, each page of which bears my signature and corrections, if any, bears my initials, and I certify that the facts contained hereon are true and correct. I further certify that I have made no request for advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request the statement be stopped. I also declare that I...was not told or prompted what to say [in this] statement, and that this statement was completed at 10:40 a.m. on the 24th of January, 2002.

Defendant first contends Sergeant King was required to give defendant the *Miranda* warnings orally and not just in writing. Defendant further contends she did not read the *Miranda* warnings placed in front of her. As a result of these alleged defects, defendant asserts she did not knowingly waive her *Miranda* rights, and thus, her confession should have been suppressed as being obtained in violation of her rights under the Fifth and Fourteenth Amendments to the United States Constitution.

Where a defendant challenges the admissibility of an in-custody confession, the trial judge must conduct a *voir dire* hearing to ascertain whether defendant has been informed of their constitutional rights and has knowingly, voluntarily, and intelligently waived these rights before making the challenged admissions. *State v. Jenkins*, 300 N.C. 578, 584, 268 S.E.2d 458, 463 (1980). "When the *voir dire* evidence is conflicting, as here, the trial judge must weigh the credibility of the witnesses, resolve the crucial conflicts and make appropriate findings of fact." *Id.* Where the trial court's findings of fact are supported by competent

evidence, they are conclusive on appeal. *Id.* However, the trial court's conclusions of law "must be legally correct, reflecting a correct application of applicable legal principles to the facts found." *State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997). On appeal, the conclusions of law, which are drawn from these findings are fully reviewable. *State v. Booker*, 306 N.C. 302, 308, 293 S.E.2d 78, 81 (1982).

There is no specific requirement as to the exact manner in which police must convey *Miranda* warnings to a person suspected of a crime. *United States v. Osterburg*, 423 F.2d 704, 705 (9th Cir.), *cert. denied*, 399 U.S. 914, 26 L. Ed. 2d 571 (1970). "The requirement is that the police fully advise such a person of [their] rights" *Id.* (quoting *Bell v. United States*, 382 F.2d 985, 987 (9th Cir. 1967), *cert denied*, 390 U.S. 965, 19 L. Ed. 2d 1165 (1968)). Although we were unable to find a case in North Carolina addressing this issue, numerous other courts have found that it is not essential that the warnings required by *Miranda* be given in oral rather than written form. *See e.g., State v. Sledge*, 546 F.2d 1120, 1122 (4th Cir.), *cert. denied*, 430 U.S. 910, 51 L. Ed. 2d 588 (1977); *United States v. Coleman*, 524 F.2d 593, 594 (10th Cir. 1975); *United States v. Bailey*, 468 F.2d 652, 659-660 (5th Cir. 1972); *United States v. Alexander*, 441 F.2d 403, 404 (3d Cir. 1971); *United States v. Van Dusen*, 431 F.2d 1278, 1280 (1st Cir. 1970); *United States v. Johnson*, 426 F.2d 1112, 1115 (7th Cir.), *cert denied*, 400 U.S. 842, 27 L. Ed. 2d 78 (1970); *United States v. Osterburg*, 423 F.2d 704 (9th Cir. 1970); *Bell v. United States*, 382 F.2D 985, 987 (9th Cir. 1967). Thus, the mere fact that Sergeant King did not read the *Miranda* warnings to defendant, standing alone, does not render defendant's waiver ineffective.

Defendant further argues that since she did not read the "Voluntary Statement" form before she signed it, she did not receive the required *Miranda* warnings and, therefore her statement is inadmissible. We find this argument unpersuasive.

When a statement purporting to be a confession bears the signature of the accused, it is presumed, nothing else appearing, that the accused has read it or has knowledge of its contents." *State v. Walker*, 269 N.C. 135, 139, 152 S.E. 2d 133, 137 (1967). The rule in civil cases, also applicable to the defendant's argument in this criminal case, is that a person who signs a paper writing has a duty to ascertain the contents of the writing, and he will be held to have signed with full knowledge and assent as to its contents unless it is shown that he was wilfully misled or misinformed by the opposing party, or if the contents were fraudulently withheld from him. *Williams v. Williams*, 220 N.C. 806, 18 S.E.2d 364 (1942).*State v. King*, 67 N.C. App. 524, 526, 313 S.E.2d 281, 283 (1984).

Here, the trial court found, by a preponderance of the evidence, that: (1) it had the opportunity to see and observe each witness and determine what weight and credibility to give each witness's testimony; (2) Detective King did not orally advise defendant of her *Miranda* rights, but rather gave them to her to read on a form entitled "Voluntary Statement;" (3) defendant could read and write; (4) she apparently read the Voluntary Statement form; (5) defendant was 22 years old at the time she gave this statement and she had previous employment, which required her to read and sign other documents; and (6) defendant signed each page of her four page statement and on the first page of the document she signed acknowledging she had read each page of the statement and initialed any corrections made to the statement. Based on these

findings of fact, the trial court concluded:

4. The Statement made by the Defendant to Detective David King on January 24, 2002, was made freely, voluntarily and understandingly.

5. The Defendant fully understood her constitutional rights to remain silent and her constitutional right to counsel and all other rights.

6. The Defendant freely, knowingly, intelligently and voluntarily waived each of those rights and thereupon made the statement to the abovementioned officers.

We find that there was competent evidence in the record to support the findings of fact, and these in turn support the conclusions of law.

Despite our ruling today, we do note that the better practice would have been to give the accused both an oral recitation of the required *Miranda* warnings, as well as providing her with a written explanation of such rights, and a request that she execute a legally sufficient waiver before the officers began the custodial interrogation. *See United States v. Sledge*, 546 F.2d 1120, 1122 (4th Cir. 1977) (stating that while *Miranda* does not require the warnings be in oral rather than written form, since a heavy burden rests on the State to show the waiver was knowingly given, the better practice is to give the defendant his *Miranda* warnings in both oral and written form).

Next, defendant argues in the alternative, that even if she did receive the *Miranda* warnings, the waiver of those rights was not knowing, intelligent, and voluntary. "[F]or a confession to be admissible, the *Miranda* warnings must be given, a valid waiver obtained, and the confession must be voluntary." *State v. Detter*, 298 N.C. 604, 628, 260 S.E.2d 567, 584 (1979). The State has the burden of establishing by a preponderance of the evidence that the defendant knowingly, voluntarily, and intelligently waived the rights afforded to her under *Miranda*. *State v.*

Johnson, 304 N.C. 680, 685, 285 S.E.2d 792, 795 (1982). The voluntariness of a waiver is to be determined by the "totality of the circumstances." *State v. Wallace*, 351 N.C. 481, 520, 528 S.E.2d 326, 350, *cert. denied*, 531 U.S. 1018, 148 L. Ed. 2d 498 (2000) (citations omitted).

In order to protect an accused's Fifth Amendment right not to be compelled to incriminate themselves, *Miranda* directs that an accused who is subject to custodial interrogation have the right to consult with an attorney and to have counsel present during such questioning. *Miranda*, 384 U.S. 436, 470, 16 L. Ed. 2d 694, 421 (1966); *Steptoe*, 296 N.C. 711, 716, 252 S.E.2d 707, 710 (1979). If at any time during the questioning a suspect requests counsel to be present, all questions must cease immediately. *Miranda*, 384 U.S. at 444-45, 16 L. Ed. 2d at 707; *Steptoe*, 296 N.C. at 716, 252 S.E.2d at 710. However, a suspect must *unambiguously* request counsel. *Davis v. United States*, 512 U.S. 452, 459, 129 L. Ed. 2d 362, 371 (1994). "[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer... would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning." *Id.* (emphasis in original).

Defendant contends she asserted her Fifth Amendment right to counsel during the interrogation when she told the officer she had a court-appointed attorney representing her on the conspiracy charge. However, we find that Officer King did not deny defendant the opportunity to contact the attorney who represented her on the conspiracy charge. To the contrary, when defendant mentioned she had a court-appointed attorney representing her on her conspiracy charge, Detective King told defendant she could use the telephone and telephone book located in the room

to call her attorney. Detective King also told defendant he would stop the statement until such time as she had the opportunity to talk to her lawyer. At best, defendant's statement amounted to an equivocal request for an attorney, and as the case law indicates, the officer could have and did continue questioning defendant without any constitutional violation.

Detective King attempted to clarify whether defendant wanted a lawyer. He also gave defendant every opportunity to contact her attorney. Defendant never availed herself of these opportunities. For these reasons, we find defendant's Fifth Amendment right to counsel was not violated.

Defendant, again argues in the alternative, that even if she did receive the warnings required under *Miranda v. Arizona*, the waiver of those rights was not voluntary because Detective King gave her an implied "warning" about the consequences of contacting her attorney.

For a waiver of defendant's rights to be valid, it must be given free from intimidation, coercion, or deception. *Moran v. Burbine*, 475 U.S. 412, 421, 89 L. Ed. 2d 410, 421 (1986). As we stated above, the State has the burden of establishing by a preponderance of the evidence that the defendant voluntarily waived the rights afforded to her under *Miranda*, and that the voluntariness of a waiver is to be determined by the totality of the circumstances. *Johnson*, 304 N.C. at 685, 285 S.E. 2d at 795; *Wallace*, 351 N.C. at 520, 528 S.E.2d at 350. Furthermore, where it appears that an incriminating statement was given under any circumstances indicating coercion or involuntary action, that statement will be inadmissible. *Steptoe*, 296 N.C. at 716, 252 S.E.2d at 710.

Defendant claims Officer King gave her an implied

"warning" against calling her attorney by telling her that if she wanted to call her attorney he would stop his questioning and she could give her version in court. When asked at the *voir dire* hearing whether she felt she was being warned, defendant responded in the negative. She testified that Detective King never told her what, if anything, would happen to her if she did not give her statement. The lack of evidence that defendant felt threatened or was being warned supports the trial court's conclusion that defendant's statement was voluntary. Detective King's remarks could not be taken as a threat or warning. Rather, Detective King's statement to defendant, that he would stop the questioning if she chose to talk with her attorney, was simply a recital of her rights and the officer's duty as required by *Miranda v. Arizona*. The rest of Detective King's remarks, that defendant "could give her version in court," also cannot is merely the truth. If defendant chose not to give her statement, then she would be given the chance to tell her side of the story at trial. In considering the totality of the circumstances, none of the findings supports a claim that the officer threatened defendant or otherwise attempted to frighten or coerce her into confessing.

Our review of the record in this case affirms that the trial court did not err by denying defendant's motion to suppress, as her statement was given voluntarily and knowingly. This assignment is overruled.

We also find that defendant's Sixth Amendment right to counsel was not violated. The Sixth Amendment provides that "[i]n all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense." U.S. CONST. amend VI. A defendant's Sixth Amendment right to counsel does not attach until a prosecution has been commenced, either "by way of a formal charge, preliminary

hearing, indictment, information or arraignment." *Texas v. Cobb*, 532 U.S. 162, 167-68, 149 L. Ed. 2d 321, 328 (2001), *cert denied*, 537 U.S. 1195, 154 L. Ed. 2d 1032 (2003); *State v. Warren*, 348 N.C. 80, 95, 499 S.E.2d 431, 439, *cert denied*, 525 U.S. 915, 142 L. Ed. 2d 216 (1998) (citations omitted). The police may not interrogate a defendant whose Sixth Amendment right has attached unless counsel is present or the defendant expressly waives his right to assistance of counsel. *Warren*, 348 N.C. at 95, 499 S.E.2d at 439. However, the Sixth Amendment right to counsel is *offense-specific* and "cannot be invoked once for all future prosecutions." *Cobb*, 532 U.S. at 167, 149 L. Ed. 2d at 328; *Warren*, 348 N.C. at 95, 499 S.E.2d at 439 (emphasis added)(citations omitted). Just because a defendant invokes his Sixth Amendment right to counsel on a given charge does not prevent police from questioning him about other possible criminal activity, even if the other criminal activity is factually related to the first crime charged. *Cobb*, 532 U.S. at 172-73, 149 L. Ed. at 331-32; *Warren*, 348 N.C. at 95, 499 S.E.2d at 439.

To ascertain whether the second crime is a separate crime from the first for purposes of determining whether the Sixth Amendment right to counsel has attached, the court must determine if each crime requires proof of a fact which the other does not. *Cobb*, 532 U.S. at 173, 149 L. Ed. 2d at 331-32. If the two crimes are different, then the police may question the suspect about the second crime without the presence of the attorney representing the defendant in the first crime. *Id.*

When Officer King arrested defendant on the robbery charge, defendant told the officer she had an attorney who was appointed to represent her on the conspiracy charge. Officer King told defendant that the attorney who had been appointed to represent her on the

conspiracy charge had not been appointed to represent her on the robbery charge because the two charges were different. The North Carolina Supreme Court has determined that robbery and conspiracy to commit robbery are separate crimes. *State v. Kemmerlin*, 356 N.C. 446, 477, 573 S.E.2d 870, 891 (2002); *State v. Carey*, 285 N.C. 509, 513, 206 S.E.2d 222, 225 (1974). Therefore, defendant's Sixth Amendment right to counsel had not attached to the robbery with a dangerous weapon charge. Thus, it was permissible for the police to question defendant about the robbery, outside the presence of the attorney who had been appointed to represent her in the conspiracy charge.

AFFIRMED.

Chief Judge MARTIN and Judge GEER concur

APPENDIX B

ORDER OF THE SUPREME COURT OF NORTH CAROLINA

359 N.C. 286, --- S.E.2d ----

Supreme Court Of North Carolina.
State Of North Carolina
V.
Crystal Strobel

No. 311P04.
Feb. 3, 2005.
Katherine Jane Allen, Assistant Appellate Defender, for Crystal Strobel.
Daniel D. Addison, Assistant Attorney General, William David McFadyen, Jr., District Attorney, for State.

Prior report: 164 N.C.App. 310, 596 S.E.2d 249.
ORDER
Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendant on the 22nd day of June 2004 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Attorney General, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is
"Allowed by order of the Court in conference, this the 3rd day of February 2005."
Upon consideration of the petition filed on the 22nd day of June 2004 by Defendant in this

matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 3rd day of February 2005."

N.C.,2005.

State v. Strobel

359 N.C. 286, --- S.E.2d ----